

Procurement Operating Practices Manual

The Procurement Operating Practices Manual (“Manual”) was written to replace the Procurement Policies and Procedures Manual. The original manual was written prior to the passage of the Federal Acquisition Streamlining Act (FASA) and the subsequent removal of the Federal Norm from the Department of Energy Acquisition Regulations (DEAR). This Manual reflects the current requirements and thresholds associated with the above procurement philosophy.

The Manual is based on: (1) Ames Laboratory policies and requirements; (2) requirements of the contract between Iowa State University (ISU) and the Department of Energy (DOE); (3) requirements imposed by Federal law, regulations, and DOE administrative directives; and (4) generally accepted good business practices. The Manual implements these requirements and also establishes Ames Laboratory operating procedures in areas not covered by law, regulation or contract language.

Comments and questions regarding this manual should be directed to the contact person listed below:

Name: Andrea Spiker
Manager, Purchasing and Property Services
Address: 211 TASF
Phone: 515-294-6738
Manual: 583000.001

Comments and questions regarding this manual should be directed to:

Andrea Spiker, Manager, Purchasing and Property Services
spiker@ameslab.gov
294-6738

Sign-Off Record is maintained in the Purchasing and Property Services Office, 211 TASF.

1.0 Revision/Review Log

<u>Revision Number</u>	<u>Effective Date</u>	<u>Contact Person</u>	<u>Pages Affected</u>	<u>Description of Revision</u>
0	01/04/93	Les Merritt	All	Initial Issue
1	01/03/97	Les Merritt	vii	Add Proc 21
			55--55-4	Add Proc 21
			200	Add Proc 21
			204	Add Proc 21
			Form	T & C's
2	10/01/00	Jack Cummings	All	Format Change
3	10/01/03	Jack Cummings	All	Editorial
4	10/01/07	Jack Cummings	All	Editorial
5	01/01/09	Jack Cummings	9 & 53	Editorial
5.1	05/18/12	Andrea Spiker	All	Thresholds

2.0 Purpose and Scope

The format of this manual reflects the current procurement philosophy and thresholds associated with the Federal Acquisition Streamlining Act (FASA).

3.0 General

Several words have been selected for use throughout the Manual for purposes of convenience and continuity rather than for preciseness. For example, the word "Buyer" wherever it appears shall be deemed to mean the person in the Purchasing Office with responsibility for placing and administering subcontracts or purchase orders. "Requestor" and "Requisitioner" are used interchangeably to mean the employee requiring service. The document manifesting the agreement is titled "subcontract" or "purchase order". The "subcontractor" also includes the term "vendor" or "supplier" and lastly, "purchasing" and "procurement" are used interchangeably.

Ames Laboratory
Office Purchasing & Property Services
Title Procurement Operating Practices
Chapter General, Approval & Distribution

Manual 583000.001
Revision 5.1
Effective Date 05/18/2012
Review Date Annually

This Manual has received formal endorsement of the Director of Ames Laboratory and has been approved by DOE. As revisions become necessary, they will be submitted to Ames Laboratory Management and DOE (substantive only) for approval. Each member of the Purchasing Services Office is responsible for becoming familiar with those sections of the Manual pertinent to his/her duties. Deviations from these policies require the concurrence of the Manager of Purchasing and Property Services.

1. INTRODUCTION

1.1 OVERVIEW

The mission of the Ames Laboratory (AL) Procurement Office is to procure supplies and services consistent with sound, ethical business practices and applicable regulations in partnership with our customers and the U.S. Department of Energy (DOE). **Mission success** in this context is defined as the timely and cost-effective procurement of quality products and services that offer the best value to AL customers and, therefore, promote the best interests of the U.S. Government.

The AL purchasing system reflects changes in policy governing DOE management and operating (M&O) contractors. The Procurement Operating Practices (POP) described herein supplant the federal norm with best practices but still comply with the prime contract requirements. This fundamental shift in policy has been the impetus for much innovation and flexibility, yet allows AL to continue to employ federal procurement practices where they are, in fact, a best practice.

The integrity of this purchasing system depends on the consistent application of well-defined procurement requirements and practices.

1.2 OPERATING PRINCIPLES

1.2.1 Procurement Authority

Authority to make contractual commitments to outside individuals and organizations is vested in the AL Purchasing Manager and in those to whom the Manager has delegated this authority. The Manager's authority is based on a letter of delegation from the AL Chief Operations Officer. AL will not generally consider itself bound by commitments to subcontractors made by persons to whom procurement authority has not been delegated. Such unauthorized commitments may violate ISU policies and the federal and DOE acquisition regulations made applicable to AL by its prime contract with DOE.

Commensurate with the level of procurement authority delegated, the Buyer is obligated to use sound business practices, be innovative, maintain professionalism, and obtain market knowledge relative to the procurement.

1.2.2 Obtaining Best Value

Competition is the preferred method of subcontracting and is consistent with best-value purchasing practices. Obtaining best value in procurement is achieved through a multi-faceted approach resulting in the acquisition of quality products at fair and reasonable prices. One of the most important factors in the best-value equation is accommodating customer requirements while ensuring that all vendors are treated fairly during the acquisition process.

Best value can entail more than awarding to the vendor who submits the lowest-priced, technically acceptable proposal. The term **best value** means an offer or quotation that is most advantageous to the U.S. Government, considering cost, pricing, the expected level of performance and other factors. The Buyer shall use effective competitive techniques that are appropriate for the particular requirements of that specific procurement. Quality assurance, past performance, and other variables, in addition to cost and price, are to be considered as appropriate.

1.2.3 Partnering

Consistent with obtaining best value is the ability to accomplish customer objectives with a streamlined procurement process (i.e., one that minimizes acquisition lead time and administrative costs). Toward this end, the POP emphasizes initiatives to partner with internal and external customers and vendors.

1.2.4 Balanced Scorecard

The Balanced Scorecard (BSC) system requires AL to develop a plan for assessing performance and requires operational adherence to the DOE approved plan with national and local performance goals. The AL BSC plan is structured to evaluate procurement functions based on four key perspectives:

- ! customer
- ! internal business process
- ! learning and growth
- ! financial

Performance data from all four perspectives are gathered and reported periodically to DOE. An annual summary report of the “Balanced Scorecard Self-Assessment” is submitted to DOE-CH. Information includes the same data submitted annually for the “Performance Evaluation and Measurement Plan (PEMP)”. Publication of performance metrics identifies trends in performance and promotes bench marking techniques to continuously improve cost and efficiency.

1.2.5 Ethics

Procurement personnel shall maintain the highest ethics and standards in conducting business operations consistent with Iowa State University's (ISU) ethical code of conduct. All conduct shall be in accordance with the highest standards of integrity and fair dealing to avoid even the appearance of conflict between personal interests and those of ISU.

An employee shall not, under circumstances that might reasonably be interpreted as an attempt to influence him/her in the conduct of his/her duties, accept any gratuity or special favor from individuals or organizations with whom AL is doing business or proposing to do business. This rule does not preclude token gifts or entertainment of nominal monetary value.

The Anti-Kickback Act prohibits AL, its subcontractors at any tier, and their employees from providing, attempting to provide, offering to provide, soliciting, accepting, and attempting to accept **kickbacks**. This act also provides civil and criminal penalties for its violation. No employee shall solicit, accept, or attempt to accept any kickback. Suspected violations of the Anti-Kickback Act shall be immediately reported to the AL Purchasing Manager.

1.2.6 Socioeconomic Considerations

A fair proportion of supplies and services shall be purchased from small minority business concerns. In accordance with the subcontracting plan in the prime contract, the Buyer shall endeavor to provide maximum practicable opportunities for all

socioeconomic concerns. The Buyer shall consult with the Small Business Program Manager (SBPM) for assistance with identifying socioeconomic sources, obtaining subcontracting plan approvals, or answering questions regarding reporting or goals.

1.3 DELEGATION OF AUTHORITY AND APPROVALS

1.3.1 Overview

This section specifies procurements requiring DOE advance notice and consent, authority of personnel to commit funds, and required internal reviews and approvals.

1.3.2 Procurements Requiring Consent

Prior DOE review and written approval is required of Inter-Contractor Purchases (ICP'S) expected to exceed \$1,000,000 or for subcontract actions which exceed \$500,000 or which fall within any one of the following categories, unless other procedures and guidelines have been approved by the Contracting Officer, in consultation with Intellectual Property Counsel.

1. Acquisition of software by negotiated lease or license;
2. Purchase of patents or patent license rights, including the payment of royalties, and permits or license fees;
3. The recognition of proprietary rights, including the recognition of technical data as trade secrets.
4. Any restriction of DOE's use of the supplies or data procured under a subcontract.

1.3.3 Internal Approval Authority

Policies and procedures, including those in this delegation of authority, are never substitutes for sound business judgment. Such judgment may include obtaining executive approvals and staff review (which are not necessarily required by delegations of authority or other ISU policies and procedures), where the financial or public impact of a particular transaction is unusually significant.

Procurement personnel may execute subcontracts, purchase orders, agreements, modifications, and letter subcontracts, and consent to lower-tier subcontracts not to exceed the monetary limitations set forth for their classification without approval by higher authority as follows:

Buyer	<\$50,000
Purchasing Manager	<\$500,000
Chief Operations Officer	≥\$500,000
Laboratory Director	≥\$1,000,000

1.4 SYSTEM ADMINISTRATION

AL is committed to developing, issuing, and maintaining the written description of its purchasing system, the ***Procurement Operating Practices (POP)*** document, in compliance with its prime contract and applicable regulations.

The AL Purchasing Manager is responsible for the preparation, review, approval, issuance, and revision of the system description.

Assessment of the system description shall be a continuous process of improvement with revisions made as needed. Revisions to the POP will be identified by a revision number and date. Substantive revisions will be submitted to DOE for review and acceptance before implementation.

2. ACQUISITION PLANNING

2.1 REQUIREMENT IDENTIFICATION

2.1.1 Planning

The purpose of acquisition planning is to ensure that needs are met in the most effective, economical, and timely manner. Acquisition planning should begin as soon as the need is identified, preferably well in advance of the date by which subcontract award is necessary. The magnitude and character of procurement planning should be appropriate and proportionate to the complexity and dollar value of the requirement. Specific planning considerations should include dollar value, sourcing, competition, urgency, type of subcontract, options, quality assurance requirements, U.S. Government-furnished property, security and other considerations. Sound judgment is expected to be used in planning and efficiently conducting procurements.

2.1.2 Procurement Requests

Requests for procurement of supplies or services should include suitable specifications, standards, and/or purchase descriptions that clearly and accurately describe the supplies or services. Buyers should assist customers in the preparation of specifications and/or purchase descriptions, where assistance is necessary. If such specifications, standards, and/or purchase descriptions are not available and it is impractical or uneconomical to prepare them, brand name or equal descriptions may be used.

Requirements are handled as expeditiously as possible with due consideration given to emergency requirements, maximizing buying power, placing higher priority orders, satisfying socioeconomic goals, and taking advantage of conditions in the marketplace. Premium transportation methods for emergency requirements may be authorized if necessary to meet the specified delivery date.

2.1.3 Ratification of Unauthorized Commitments

When procurement actions involve commitments to subcontractors made by persons to whom procurement authority has not been delegated, ratification of the action may be necessary. The procurement may not proceed until ratification of the action is approved by the Purchasing Manager.

2.1.4 Defense Priorities and Allocations System

The Defense Priorities and Allocations System (DPAS) regulations issued by the Department of Commerce (DOC) ensure that vendors give preferential treatment to purchase orders for national defense and atomic energy programs. Under DPAS, the DOC has delegated to U.S. Government agencies the authority to issue "rated orders." A rated order is a prime contract, subcontract, or purchase order in support of

authorized national defense or atomic energy programs issued in accordance with DPAS regulations. There are two types of rated orders—**DO-rated** and **DX-rated**. Each rated order must contain the following elements:

- ! rating symbol (**DO** or **DX**) indicating the level of priority followed by the program identification symbol. These two elements constitute the “priority rating”;
- ! date or dates on which delivery is required;
- ! signature of an authorized official and;
- ! Defense Priorities and Allocations System clause as follows:

Defense Priorities and Allocations System

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).

The DPAS is designed to be largely self-executing, however, if production or delivery problems arise, special priorities assistance is available from DOE and DOC.

2.1.5 Exchange of Information

The purpose of exchanging information is to improve understanding of the requirements, thereby enhancing the ability to obtain quality products and services at reasonable prices, as well as to increase the efficiency of proposal preparation, evaluation, negotiation, and subcontract award. Exchange of information by interested parties in a procurement is encouraged, from the earliest identification of a requirement.

Pre-planning and the early exchange of information can efficiently and effectively identify and resolve concerns regarding procurement strategy, including proposed type of subcontract; T&Cs; requirement feasibility, including performance requirements, Statements of Work (SOWs), and data requirements; availability of reference documents; and other industry concerns or questions. Techniques to promote early exchange of information include the following items:

- ! industry or small business conferences;
- ! market research;
- ! draft solicitations, specifications, or SOWs;
- ! presolicitation conferences; and
- ! site visits.

Solicitations for Information/Planning Purposes (Requests for Information) or Expressions of Interest may be used when there is no intention to award a subcontract on the basis of the solicitation but price, delivery, market, or capabilities information is needed for planning purposes. Responses to Solicitations for Information or Expressions of Interest are not offers and cannot be accepted to form a binding subcontract.

General information about needs and future requirements may be disclosed; however, appropriate steps should be taken to avoid creating an unfair competitive advantage. When a presolicitation or preproposal conference is conducted, distributed materials should be made available to potential offerors upon request.

2.2 SOURCING

2.2.1 General Considerations

To promote acquisition of quality products and services at fair and reasonable prices that provide the best value to AL and the U.S. Government, sourcing activities shall foster practices including: identifying capable and reliable subcontractors who either show track records of successful past performance in a safe manner or demonstrate a current superior ability to perform, minimizing lead-time and administrative costs while maintaining adequate competition of procurements, and facilitating quality relationships with vendors.

Long-term agreements and relationships with best-of-class suppliers are encouraged to promote partnering activities that provide effective competition, reduce costs, share risks, increase efficiencies, and reduce administrative redundancies.

2.2.2 Small Business Considerations

2.2.2.1 Policy. A fair proportion of purchases of supplies and services shall be placed with small, small disadvantaged, small woman-owned, and other socioeconomic business concerns. AL has agreed to accomplish the maximum amount of subcontracting with small business concerns that is consistent with the efficient performance of its prime contract. Solicitations, time for preparation of offers, quantities, and delivery dates should be arranged, where possible, to facilitate the participation of small business concerns.

2.2.2.2 Competitive Set-Asides. Procurements of \$3,000 to \$150,000 shall be reserved exclusively for small business concerns if reasonable expectation exists of receiving offers from two or more responsible small business concerns (or at least one concern for purchases <\$25K) that will be competitive in terms of market price, quality, and delivery.

Competitive procurements exceeding \$150K may also be set aside for small business concerns. The small business size standard determined in accordance with Federal Acquisition Regulation (FAR) Subpart 19.1 and the product classification determined from the North American Industrial Classification System (NAICS) Manual shall be included in the notice.

Competitive procurements may also be set aside for firms certified as participants in the

SBA's 8(a) Program. Written solicitations involving a competitive set-aside for 8(a) firms shall contain the clause entitled Notice of Competition Limited to Eligible 8(a) Concerns.

2.2.2.3 Noncompetitive 8(a) Program Purchases. In an effort to encourage awards to small disadvantaged business concerns, AL is authorized by DOE to make noncompetitive awards up to \$5M for manufacturing standard industrial classifications and up to \$3M for all other acquisitions to firms certified as participants in the SBA 8(a) program. Such awards must be for work properly classified under a NAICS code in the 8(a) firm's SBA-approved business plan and be made at fair market prices. Justification for a non-competitive procurement is not required for such awards.

The clause entitled Limitations on Subcontracting shall be included in noncompetitive 8(a) awards.

2.2.3 U.S. Government, Special, and Directed Sources

2.2.3.1 General Services Administration. Except as noted in Sect. 2.2.3.2, the General Services Administration (GSA) is a non-mandatory source of supply; however, AL should obtain its requirements from GSA when it is economically advantageous or otherwise in the best interest of the government. The GSA manages two programs: the GSA Advantage Program and the Federal Supply Schedule (FSS) Program. The GSA maintains a stock of commodities under the GSA Advantage Program and places contracts with established commercial firms to provide supplies and services at stated prices for given periods of time under the FSS Program. AL can place delivery orders directly with the FSS contractors and issue requisitions directly to GSA Advantage for stock items. When a delivery order is submitted directly to the FSS contractor without seeking competition, the following considerations do not apply:

- ! sole-source justifications (unless the requester restricted the procurement to one source of supply);
- ! Solicitation and Source List Review forms;
- ! submission, certification, and audit of cost or pricing data of schedule items;
- ! price or cost justifications of schedule items;
- ! completion of representations and certifications; and
- ! the use of T&Cs other than commercial item terms.

The following clause shall be included in delivery orders:

This is a delivery order issued under your Federal Supply Schedule Contract pursuant to authorization from the Department of Energy. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule Contract, the latter will govern.

2.2.3.2 Federal Prison Industries, Inc. (FPI) and Committee for Purchase from

People Who Are Blind or Severely Disabled. Most of the products on the FPI Schedule and the Procurement List are initially purchased by the GSA and then made available to customer agencies through GSA distribution facilities. Inventory items that correspond to products manufactured by FPI and workshops and that are available from GSA are indicated as mandatory purchase items from GSA.

2.2.3.3 Helium. Major requirements of helium shall be obtained directly from the Bureau of Land Management, or from distribution contractors eligible to sell Bureau of Land Management helium to federal agencies and their contractors. As used herein, a **major requirement** of helium is a requirement of 200,000 standard cubic feet (scf), measured at 14.7 lb/in.² absolute pressure and 70 F temperature, or more, including liquid helium gaseous equivalent.

All purchase orders placed with distribution contractors shall contain the following statement: "Helium furnished under this subcontract shall be Bureau of Land Management helium."

2.2.3.5 Lithium. Lithium is available at no cost other than normal packing, handling, and shipping charges from DOE Oak Ridge Operations Office (DOE-ORO). While purchases of lithium are unclassified, the specific quantities, destination or use may be classified. Excess quantities at DOE-ORO are to be considered the first source of supply before procurement from other sources.

2.2.3.6 Precious Metals. DOE-ORO is responsible for maintaining the supply of precious metals, and the Business Center for Precious Metals Sales and Recovery in Oak Ridge has been assigned management of these metals. Precious metals include platinum, palladium, iridium, osmium, rhodium, ruthenium, gold, and silver.

2.2.3.7 Security Cabinets. Acquisitions of security cabinets shall be in accordance with FPMR 41 CFR 101-26.507 and the *Prerequisites to Ordering* criteria contained in FPMR 41 CFR 101-25.302-2 and DOE-PMR 41 CFR 109-25.302-2.

The GSA has issued a multiple-award FSS contract for insulated and uninsulated security filing cabinets, safes, vault doors, map and plan files and accessories, Communications Security (COMSEC) containers, and special access control containers and key locks. Security cabinets covered by the schedule shall be purchased using the FSS. Security cabinets for which no FSS contractor is shown on the schedule may be purchased on the open market.

2.2.3.8 Strategic and Critical Materials. Strategic and critical materials (e.g., minerals and ores) may be available for transfer from the Department of Defense (DOD). Detailed information on quantities and qualities available and transfer procedures may be obtained from:

**Defense National Stockpile Center
1745 Jefferson Davis Highway
Crystal Square Building #4, Suite 100**

Arlington, VA 22202

2.2.4 Sourcing Restrictions

2.2.4.1 Debarred, Suspended, and Ineligible Contractors. The GSA compiles and distributes the name of vendors that have been debarred, suspended, or voluntarily excluded from U.S. Government contracting. The list is available at <http://www.epls.gov>.

AL reviews the EPLS directory for transactions equal to or greater than \$30,000, and may not award new subcontracts to, or renew current subcontracts with contractors who are debarred, suspended, proposed for debarment, ineligible, or voluntarily excluded without a determination by the AL Director or designee that a compelling reason exists for award to the subcontractor and DOE approval is obtained.

The standard Representations and Certifications booklet includes a section entitled Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. Responses of offerors to the certification will be reviewed and considered in determining the responsibility of a prospective awardee.

2.2.4.2 Clean Air and Water. Subcontracts may not be entered into, renewed, or extended with firms proposing to use facilities on the Environmental Protection Agency (EPA) list of facilities with a conviction under the Clean Air Act (CAA) or the Clean Water Act (CWA).

Subcontracts exceeding \$100K for other than commercial items may not be entered into, renewed, or extended with firms proposing to use facilities listed by EPA as violating facilities.

Responses of offerors to the Clean Air and Water certification on the standard Representations and Certifications booklet shall be reviewed to determine whether the offeror proposes to use a facility on the EPA lists. The standard T&Cs include the clause entitled Clean Air and Water applicable to all transactions exceeding \$100K except commercial items.

2.2.4.3 Certain Foreign Purchases. Except in unusual situations and unless DOE approval is obtained, the following items may not be acquired:

- ! supplies or services originating from sources within North Korea, Cuba and Sudan;
- ! check <http://www.treas.gov/offices/enforcement/ofac> for latest information

2.2.4.4 Suspect and Counterfeit Parts. Requirements in which fasteners or molded-case circuit breakers are deliverable line items may be awarded only to **qualified suppliers**. For the purposes of this document, a **qualified supplier** is one that appears

on a Qualified Supplier List issued by a federal agency, or is determined to be “responsible.”

The clause entitled Counterfeit/Suspect Materials is included in the standard terms and conditions sets.

2.2.4.5 Wiretapping and Eavesdropping Equipment. Procurement of devices primarily designed to overhear or record conversations surreptitiously is prohibited.

2.2.4.6 Support to DOE. Consulting or other services directly supporting DOE are prohibited.

2.2.5 Affiliates

Purchases may be made from affiliates in the same manner as from other sources, provided the following apply:

- ! The AL purchasing function is independent of the proposed affiliate.
- ! The same T&Cs would apply if the purchase were from a third party.
- ! Award is made in accordance with DOE-approved policies and procedures designed to permit effective competition.
- ! Award is legally enforceable where the entities are separately incorporated.

2.2.6 Source Lists

2.2.6.1 Competitive Transactions. Source lists shall be developed, in coordination with the requester as appropriate, to provide efficiency and economy in securing effective competition. Consideration should be given to the dollar value, complexity, and urgency of the requirement; socioeconomic responsibilities; development of long-term relationships with quality vendors; performance location; availability in the local trade area; and other appropriate factors. The following resources may be used for identifying potential sources:

- ! The Small Business Administration's PRO-net data base provides assistance in identifying potential small, small disadvantaged, HUBZone, woman-owned small business sources.
- ! A list of sources is maintained in the Vendor file.
- ! Requesters may identify recommended sources with the request for procurement action.
- ! Publications (e.g., Thomas Register of Products and Services and U.S. Industrial Directory) contain source lists.

2.2.6.2 Noncompetitive Transactions. Competition is the preferred method of acquiring supplies and services exceeding \$10,000. Procurements of \$25,000 or less

may be made without securing competition unless reason exists to expect that the price may not be reasonable.

Requests for sole-source or restricted competition procurements exceeding \$25,000 must be adequately justified by the requester and approved by the AL Purchasing Manager.

Justifications for sole-source or restricted competition procurements may be provided using the Justification for Noncompetitive Procurement form or using other formats containing the necessary information. Procurement's concurrence with the adequacy of the justification is acknowledged by signature of the Purchasing Manager on the form or other formats.

3. SOLICITATIONS

3.1 METHODS OF SELECTING AWARDEES

3.1.1 General Considerations

Regardless of dollar amount or solicitation method, AL shall ensure that procured items offer the best value to AL and the U.S. Government. The Buyer shall exercise discretion in selecting methods for communicating requirements and for selecting awardees.

3.1.2 Procurements Not Exceeding \$150,000

The primary objective for procurements not exceeding \$150,000 is to promote efficiency and economy and reduce administrative costs.

Purchases of \$25,000 or less may be made without securing competition in accordance with Sect. 2.2.6.2, Noncompetitive Transactions, unless the Buyer suspects that the price may not be reasonable. Competitive offers from a reasonable number of sources should be obtained for purchases exceeding \$25,000. Competition ordinarily can be obtained without soliciting offers from sources outside the local trade area. When offers are requested on a number of related items, normally one award should be issued to the firm offering the lowest aggregate price, rather than issuing more than one award on the basis of the lowest offer on each line item.

3.1.3 Procurements Exceeding \$150,000

Using one of the solicitation methods described below, the Buyer shall lead an impartial and comprehensive consideration of proposals resulting in an award that is considered the best value and is in the best interests of AL and the U.S. Government. The term **best value** means an offer or quotation that is most advantageous as to cost, price, and other factors. Procurement requirements may be communicated via one of the forms referenced in Sect. 3.2.3. During the selection process, competing offerors are entitled to

fair treatment, which requires that the Buyer and members of the evaluation team, if any, abide by the solicitation instructions in performing the evaluation. The term **fair treatment** does not mean that offerors of differing capabilities, past performance, or other relevant factors, must be treated the same.

3.1.3.1 Lowest-Priced Technically Acceptable Process. This process requires fewer resources than an evaluated best-value process, and results in selection of the lowest-priced offer that has been evaluated as technically acceptable.

If a decision is made to use a lowest-priced technically acceptable process, the following evaluation considerations apply:

- ! The threshold(s) of technical acceptability shall be set forth in the solicitation.
- ! This process does not permit tradeoffs between price and non-cost factors.

3.1.3.2 Evaluated Best-Value Process. An evaluated best-value process is more flexible, but also more resource intensive, than a lowest-priced technically acceptable process. This process is appropriate when the best value may not be the lowest-priced offer.

Competitive proposals are to be evaluated solely on the criteria specified in the solicitation. Evaluation criteria are tailored to the individual procurement but generally include the following: price or cost, past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and previous experience.

If quantitative weights or points are assigned to the evaluation criteria, the numerical criteria and relative weights shall be clearly stated in the solicitation and adhered to during the evaluation.

Alternatively, if a non-quantitative tradeoff process is used, while factors that will affect award should be clearly stated in the solicitation, tradeoffs may be made between cost and non-cost factors, permitting acceptance of other than the lowest-priced technically acceptable offer. Specific tradeoffs need not be described in terms of cost or price, nor do the trade-offs need to be quantified in any other manner. This method should generally be used for a functional or performance-based request.

In using either method of evaluated best value (i.e., scored or non-scored criteria), the

following considerations apply:

- ! Criteria should support meaningful discrimination and comparison between or among competing proposals.
- ! Consistency among solicitation requirements, notices to offerors, proposal preparation instructions, evaluation criteria, solicitation provisions or subcontract clauses, and data requirements should be ensured.
- ! Proposals should be evaluated based solely on criteria contained in the solicitation, either through the scoring process or non-scored trade-off.
- ! The offeror whose proposal is judged in the best interests of AL and the U.S. Government should be selected.

3.2 METHODS OF SOLICITATION

3.2.1 General Considerations

The term **solicitation** generally means a notification to potential subcontractors of a requirement for supplies or services.

Solicitations may be oral or written and should contain the information necessary to enable prospective subcontractors to properly prepare offers. Solicitations for Informational Purposes or Expressions of Interest should reflect that no award is anticipated. Electronic commerce should be used to the extent practicable.

3.2.2 Funding Availability

The general policy of AL is to issue solicitations only upon receipt of a requisition indicating that funds are available for the procurement. Solicitations issued without authorized funding should include the Availability of Funds clause:

3.2.3 Solicitation Forms and Formats

Solicitations shall use specific forms or other formats that contain substantially the same information. They include Request for Quotes, Request for Proposals, and Invitation for Bids.

3.2.4 Review of Solicitations

The Buyer may issue solicitations within his/her subcontract approval authority without further review. If the total expected value, including options, of the subcontract or agreement exceeds the Buyer's approval authority, the solicitation may be reviewed in accordance with the thresholds for subcontract approval.

3.3 ADMINISTERING SOLICITATIONS

3.3.1 Amendments

When, either before or after receipt of proposals, requirements are changed, relaxed, increased, or otherwise significantly modified, an amendment to the solicitation should be issued. If a change is so substantial that it warrants a complete revision of a solicitation, the original solicitation should be canceled and a new one issued, regardless of the stage of the acquisition.

Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation. Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors still eligible for award. Preferably, amendments should be issued in the same manner as the solicitation. When written solicitations have been used, oral amendments should be documented and followed with an amendment confirming the action.

If the proposal considered to be most advantageous to AL and the U.S. Government involves a substantial departure from the stated requirements, all offerors should be provided an opportunity to submit new or amended proposals on the basis of the revised requirement; provided that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection.

3.3.2 Submission and Withdrawal of Proposals

Proposals, modifications, and revisions received after the specified time are late, but may be considered if doing so is in the best interests of AL and the U.S. Government.

An offeror may withdraw a proposal at any time before award. Written proposals are withdrawn upon receipt by the Buyer of a written notice of withdrawal. Proposals may be destroyed or returned to the offeror at the offeror's request and expense.

4. SPECIAL CONSIDERATIONS, METHODS AND CLAUSES

4.1 SPECIAL CONSIDERATIONS

4.1.1 Aircraft

Acquisitions of aircraft, except for rentals or loans of 30 days or less, must be approved in advance by DOE Headquarters (HQ).

4.1.2 Bonds

Performance and payment bonds are not generally required for other than construction subcontracts and only when necessary to protect U.S. Government interests. Bonds shall be submitted by the subcontractor before beginning field work.

If bonds are required, the solicitation shall specify the following items:

- ! requirement for the bond(s),
- ! penal sum of each bond (expressed either as a fixed sum or as a percentage of the subcontract price), and
- ! deadline for submitting acceptable bonds.

The following table shows the penal amounts for performance and payment bonds:

Performance and Payment Bonds

Bond Type	Subcontract Price	Bond Amount
Performance - Construction Subcontracts - Other than Construction Subcontracts	>\$100,000	100% of price
Payment - Construction Subcontracts - Other than Construction Subcontracts	>100,000 >\$25,000 to <\$100,000	100% of price See prime contract

Adequate security shall be obtained for bonds. Acceptable forms include:

- ! Corporate or individual sureties
- ! U.S. bonds or notes;
- ! Certified or cashier's checks, bank drafts, money orders, or currency; and/or
- ! Irrevocable letter of credit.

Corporate sureties must appear on the list contained in the Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies (<http://fms.treas.gov>).

4.1.3 Cost Accounting Standards (CAS)

See prime contract.

4.1.4 Export Control

The export of all technical data and hardware is prohibited unless and until the appropriate general or specific license, authorizing such export, is established or a validated license is granted. Several federal government agencies are responsible for export licensing and control. Each agency has jurisdiction for particular types of technology or restricted trade; most relevant agencies are:

Department of State—controls the export of **defense articles and defense services** under the **International Traffic in Arms Regulations** (ITAR).

Department of Energy—controls the export of Special Nuclear Material production technologies, and specific nuclear reactor and nuclear weapons technologies, under the Atomic Energy Act of 1954.

Nuclear Regulatory Commission—controls the export of certain nuclear equipment and material under the Atomic Energy Act and the Non-Proliferation Act.

Department of Commerce—controls the export of all commodities and technical data not regulated by another government agency, under the **Export Administration Regulations** (EAR). These commodities and technical data are referred to as **dual-use** items since they can be used for civilian and military purposes.

Sending or personally carrying commodities, computer hardware and software, and technical data to or between foreign countries must be in accordance with U.S. export control laws and regulations.

4.1.5 Equal Opportunity

See prime contract

4.1.6 Foreign Nationals

DOE Order 142.3 establishes requirements for approvals for unclassified visits to and performance of unclassified work at DOE facilities by foreign nationals.

4.1.7 Foreign Ownership, Control, or Influence

FOCI determinations are required for subcontractors when the subcontract requires use of access authorizations (security clearances) unless the subcontractor is defined by the following criteria:

- ! an individual performing work under a consulting or personal services subcontract as an independent contractor acting in his or her own behalf; or
- ! a local, state, or federal agency. However, the subcontract must specify that, if any work is subcontracted to a commercial entity, the subcontractor agrees to conform the subcontracts to the regulations and requirements of **DOE Acquisition Regulation** (DEAR) Subpart 904.70 and DOE Order 470.
- ! Foreign Ownership, Control or Influence Determination Documents

If the successful offeror does not possess a current FOCI determination, one shall be requested from DOE, and award made after receipt of a positive determination.

The subcontractor must have an approved Security Plan or Letter of Security Cognizance before activation or use of personnel security clearances or accessing DOE security areas. If the subcontractor is to have a security area in its own facilities to receive, produce, use, or store classified matter or nuclear materials, the subcontractor must submit a Security Plan and obtain approval from DOE. If the work will be in a DOE-approved security area of AL, the subcontractor must submit a Letter of Security Cognizance.

The Security, Classification, and Foreign Ownership, Control, or Influence clauses required in subcontracts subject to FOCI are included in the appropriate T&C sets.

4.1.8 U.S. Government Property

The standard terms and conditions sets, except the commercial items set, contain a U.S. Government Property clause. The U.S. Government Property clause generally includes the following objectives:

- ! obligating AL to deliver in a timely manner U.S. Government-furnished property in a condition suitable for use,
- ! addressing title to U.S. Government-furnished and subcontractor-acquired property,
- ! specifying when the subcontractor bears the risk of loss of or damage to U.S. Government property, and
- ! requiring the subcontractor to manage and report on U.S. Government property in its possession.

Identification of U.S. Government-furnished property and the schedule with which it will be delivered to the subcontractor shall be included in appropriate subcontracts.

In fixed-price subcontracts that require special tooling, an additional clause may be required. Special tooling is defined as jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing and inspection aids, and all components and replacements thereof that are of such a specialized nature that, without substantial modification, their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. When special tooling will be furnished to the Seller or when title will be acquired by the U.S. Government, the clause entitled Special Tooling shall be included in the solicitation and subcontract. In determining whether to acquire special tooling, the following considerations apply:

- ! future need of the items and estimated cost of producing them if not acquired;
- ! administrative expenses related to storage, record keeping, and transportation;
- ! amount offered by the subcontractor for the right to retain special tooling; and
- ! effect on future competition and subcontract pricing.

4.1.9 Hazardous Materials

To comply with a number of Occupational Safety and Health Administration (OSHA) and EPA regulations concerning the acquisition, use, and reporting of hazardous materials, it is necessary to obtain material safety data sheets for all purchased hazardous materials.

4.1.10 Health and Safety

All Environmental Safety and Health Policies of the Environmental Safety Health and Assurance (ESH&A) Office apply to all procurements of services to be performed at a facility managed and operated or leased by AL.

For Activity Hazard Levels II and III the solicitation shall require the offerors to submit Environment, Safety and Health Plans (ESHP) and/or a safety history (OSHA Injury & Illness Rates, Experience Modification Rates, etc.) if the need for either is specified in the requisition for services. In addition, the Subcontractor (On-Site) Oversight Procedure (#10200.046) shall be completed in conjunction with AL ESH&A.

Environment, Safety and Health Plans shall be submitted by the apparently successful offeror to the requestor for transmittal to AL ESH&A. Plans approved by AL shall be incorporated into the subcontract.

The subcontractor must have an approved Security Plan or Letter of Security Cognizance before activation or use of personnel security clearances or accessing DOE security areas. If the subcontractor is to have a security area in its own facilities to receive, produce, or store classified matter or nuclear materials, the subcontractor must submit a Security Plan and obtain approval from DOE. If the work will be in a DOE-approved security area of AL, the subcontractor must submit a Letter of Security Cognizance.

The Security, Classification, and Foreign Ownership, Control, or Influence clauses required in subcontracts subject to FOCI are included in the appropriate T&C sets.

4.1.11 Indemnification

Except for Price-Anderson Nuclear Hazards Indemnity, subcontractors shall not be indemnified without DOE approval.

4.1.12 Intellectual Property

Following are examples of situations in which the U.S. Government requires that subcontractors grant to it rights in any inventions that may be conceived or reduced to practice in the course of or under subcontract work:

- ! research, development, or demonstration work is to be done;
- ! design services will be furnished;
- ! work involves coordination and direction of the work of others; and/or
- ! a computer program is to be developed, or an existing program is to be modified.

Rights in technical data are generally required in subcontracts for research, development, or demonstration and other subcontracts where technical data are to be first produced under the subcontract or are required to be delivered under the subcontract.

Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. Such data may, for example, document research, experimental, developmental, demonstration, or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media (e.g., drawings or photographs) text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Technical data do not include financial reports, cost analyses, and other information incidental to contract administration.

4.1.13 Lease vs Purchase

Lease vs purchase decisions are applicable to personal property. A decision is not required in subcontracts for the use of photocopying machines for which payment is made per copy.

The term **capital lease** refers to any lease with the following characteristics:

- ! transfers ownership of the property to the lessee at the end of the lease term (i.e., a **lease-to-ownership** plan);

- ! contains a bargain purchase option (such leases are also commonly called **leases with options to purchase**); or
- ! its term (including renewal options up to the time that a bargain purchase option becomes available) is 75% or more of the estimated economic life of the leased property; or
- ! current value of the minimum lease payments is 90% or more of the fair value of the leased property at the inception of the lease.

The term **operating lease** refers to any lease other than a capital lease.

The term **straight lease** refers to a lease that does not contain an option to purchase or a provision that transfers ownership of the property to the lessee at the end of the lease term. (A straight lease may be either a capital or an operating lease).

Upon approval from DOE and funding authorization from the Capital Accounting Department, the lease may be issued.

When personal property is leased or used on subcontract work and the total cost of the lease is absorbed by AL, the subcontractor should be required to include a provision in the lease stating that AL and the U.S. Government will have the right to exercise any purchase option and realize any other benefits earned through lease payments. When less than 100% of the lease cost is absorbed by AL, negotiation objectives for cost-reimbursement subcontracts shall include the following:

- ! encouraging of subcontractors to agree to the incorporation in the lease of a U.S. Government right to realize accrued purchase option credits;
- ! obtaining, if possible, a U.S. Government right of first refusal on accrued purchase credits if the subcontractor elects not to exercise the purchase option; and
- ! providing an advance notice of at least 60 days (120 days if feasible) to AL when the subcontractor proposes to terminate the lease if the U.S. Government has been granted rights to accrued purchase option credits.

The clause entitled Personal Property Taxes shall be included in solicitations and subcontracts of any tier involving leases.

4.1.14 Organizational Conflicts of Interest

AL policy is to identify and avoid or mitigate organizational conflicts of interest (OCIs) before entering into subcontracts, agreements or work releases or task orders under agreements.

Upon receipt of a requisition or request for a subcontract; agreement; or a work release or task order under an agreement expected to exceed \$100K for advisory and assistance services, the provision entitled Organizational Conflicts of Interest

Disclosure—Advisory and Assistance Services shall be included in the solicitation. After the apparent successful offeror is identified, the offeror and any identified consultants or lower-tier subcontractors that will also furnish advisory and assistance services, will be requested to provide the statement described in paragraph (c) of the solicitation provision.

The Buyer shall evaluate the statements by the apparent successful offeror for interests relating to a potential OCI in the performance of the proposed subcontract. Using that information and any other credible information, the Buyer shall:

- ! make a written determination of whether those interests create an actual or significant potential OCI and
- ! identify any actions that may be taken to avoid, neutralize, or mitigate such conflict.

The determination shall be documented using the form entitled OCI Determination. The Buyer should award the subcontract to the apparent successful offeror unless an OCI is determined to exist that cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on OCI considerations, the Buyer shall notify the offeror, provide the reasons therefor, and allow the offeror a reasonable opportunity to respond. If the conflict cannot be avoided, neutralized, or mitigated to the Buyer's satisfaction, the Buyer may disqualify the offeror from award and undertake the disclosure and evaluation process with the firm next in line for award. If the Buyer finds that it is in the best interests of AL and the U.S. Government to award the subcontract, notwithstanding an OCI, a request for waiver shall be submitted to DOE.

The clause entitled Organizational Conflicts of Interest shall be included in subcontracts; agreements; or work releases or task orders under agreements for advisory and assistance services exceeding \$100K. The Buyer may make appropriate modifications to the clause to address potential conflicts including reducing the term of the bar in paragraph (b) to a period not less than 3 years.

4.1.15 Service Contract Act of 1965

Service contract means any contract, the principle purpose of which is to furnish services in the United States through the use of service employees, except as exempted under Section 7 of the Service Contract Act of 1965 (SCA). The term service employee, means any person engaged in the performance of a contract other than any person in a bona fide executive, administrative, or professional capacity, as those are defined in Part 541 of Title 29, code of Federal Regulations (29 CFR 541). The term service employee includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

Service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to

employees of the minimum allowable compensation, and equivalent federal employee classifications and wage rates. The SCA applies to all purchase orders and subcontracts (except as identified below) whether negotiated or advertised, including blanket agreements entered into by Ames Lab for the principal purpose of procuring services in the United States through the use of service employees. The SCA does not apply to:

- ! Individual contract requirements for services in contracts not having as their principle purpose the furnishing of services;
 - ! Contracts performed outside the United States;
 - ! Provided that the services to be performed under the contract are (i) commercial; (ii) the services will be furnished at established catalog or market prices; (iii) that the contractor uses the same wage and fringe benefit plans for employees working under the contract or subcontract as used for equivalent employees servicing commercial customers; contracts principally written for maintenance, calibration and/or repair of:
 - ! Automated data processing equipment and office information/word processing systems;
 - ! Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element; and
 - ! Office/business machines not otherwise pursuant to the above paragraph, where such services are performed by the manufacturer or supplier of the equipment and;
- and (iv) the contractor certifies to these provisions on the form provided;
- ! Provided that the services to be performed under the contract are (i) commercial; (ii) the Prime Contract or subcontract be awarded on a sole source basis or the contractor will be selected on the basis of other factors in addition to price, where price must be equal to or less important than the combination of other non-price or cost factors in selecting the contractors; (iii) the services will be furnished at established catalog or market prices; (iv) each service employee performing the services under the contract will spend only a small portion of his or her time (less than 20% of the available hours on an annualized basis, or less than 20% of available hours during the contract period if the contract period is less than a month) servicing the contract or subcontract; and (v) that the contractor uses the same wage and fringe benefit plans for employees working under the contract or subcontract as used for equivalent employees servicing commercial customer's contracts principally written for:

- ! Automobile or other vehicle maintenance services;
- ! Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, and similar card services);
- ! Contracts with hotels/motels for conferences, including lodging and/or meals which are part of the contract for the conference (which shall not include ongoing contracts for lodging on an as needed basis);
- ! Maintenance, calibration, repair and/or installation (where the installation is not subject to the Davis-Bacon Act) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis;
- ! Transportation (by common carrier) of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services);
- ! Real estate services, including real property appraisal services, related to housing, federal agencies or disposing of real property owned by the federal government; or
- ! Relocation services, including services of real estate brokers and appraisers, to assist federal employees or military personnel in buying or selling homes (which shall not include actual moving or storage of household goods and related services).
- ! The contractor's fully executed certification shall be incorporated into the resultant contract/order. Failure by the contractor to provide certification of exemption shall cause SCA to apply.

Wage determinations are obtained from <http://wdol.gov>.

- ! for each new solicitation and subcontract exceeding \$2.5K, unless a request for similar work has been submitted in the past 180 days that resulted in the receipt of a wage determination,
- ! for each subcontract modification that brings a subcontract above \$2.5K,
- ! for each exercise of an annual option, or
- ! before the second anniversary date if period of performance exceeds one year.

If a subcontract is performed at a federal facility where employees may be hired by a succeeding subcontractor, the incumbent subcontractor is required by paragraph (n) of the Service Contract Act of 1965, as amended clause to furnish a certified list of all service employees on the subcontractor's or lower-tier subcontractor's payroll during the last month of the subcontract, together with anniversary dates of employment, to the

Buyer no later than 10 days before subcontract completion. The Buyer shall provide a copy of the list to the successor subcontractor for determining employee eligibility for vacation or other fringe benefits based upon length of service (including service with predecessor subcontractors) if such benefit is required by an applicable wage determination.

The following clauses shall be included in solicitations and subcontracts exceeding \$2.5K subject to the SCA:

- ! Service Contract Act of 1965, as amended, and any applicable wage determination;
- ! Statement of Equivalent Rates for Federal Hires;
- ! Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple-Year and Option Contracts) for a fixed-price subcontract that contains annual renewal options or a period of performance exceeding one year;
- ! Fair Labor Standards Act and Service Contract Act—Price Adjustment (for a fixed-price subcontract with a period of performance not exceeding one year);
- ! Service Contract Act Minimum Wages and Fringe Benefits and a copy of the incumbent's Collective Bargaining Agreement (if the successor contractor doctrine applies and a wage determination has been requested but not received);
- ! Exemption From Application of Service Contract Act Provisions (in solicitations for maintenance, calibration, or repair of ADP, scientific and medical, and office and business equipment if the subcontract may be exempt from SCA coverage); and
- ! Service Contract Act—Place of Performance Unknown (if the Buyer believes that offerors may be interested in performing the subcontract in places that cannot be identified by the time the solicitation is issued).

DOL Publication WH-1313, Notice to Employees Working on U.S. Government Contracts, that subcontractors are required to post is available at the DOL web site. The address is cited in the Service Contract Act of 1965, as amended clause. If the award exceeds \$25K, Notice of Award of Contract, SF 99, shall be provided to the following DOL address:

**Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210**

Any violation of the Service Contract Act of 1965, as amended clause renders the subcontractor liable for the amount of any deductions, rebates, refunds, or under payments (which include nonpayment) of compensation due employees performing the subcontract. Upon written request from DOL, the amount needed to pay such underpaid employees may be withheld from accrued payments due the Subcontractor on the subcontract or on any other subcontract (whether subject to the SCA or not) with the Subcontractor.

As provided by the SCA, any failure to comply with the requirements of the clauses related to the SCA may be grounds for termination for default.

4.1.16 Subcontracting Plans

Solicitations for subcontracts, subcontract modifications, or forms of basic ordering agreements expected to exceed \$550K (\$1M for construction) shall include the provision entitled Small Business Subcontracting Plan. Proposed plans submitted by offerors should be reviewed by the Buyer, negotiated, approved by the AL Small Business Liaison Officer (SBLO) and incorporated into the subcontract. If an offeror represents that no subcontracting opportunities exist, approval by the AL SBLO is required.

In subcontracts in which a subcontracting plan was required, the Subcontractor is required to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report. Failure of a subcontractor to comply in good faith with its subcontracting plan is a material breach of a subcontract. If submitted reports show apparent failure of a subcontractor to comply in good faith with its plan, action to determine the remedy considered in the best interests of and the U.S. Government is necessary. The Buyer is responsible for monitoring the subcontracting plans, assuring that the subcontractor is in compliance with the requirements of the plan, and taking appropriate action for noncompliance.

4.1.17 Unclassified Controlled Nuclear Information

Unclassified Controlled Nuclear Information (UCNI) is unclassified U.S. Government information prohibited from unauthorized dissemination under Section 148 of the Atomic Energy Act, as amended, and includes information in the following areas:

- ! concerns atomic energy defense programs;
- ! pertains to the design of production or utilization facilities;
- ! pertains to security measures (including security plans, procedures, and equipment) for the physical protection of production or utilization facilities, nuclear material contained in such facilities, or nuclear material in transit;
- ! relates to the design, manufacture, or use of any nuclear weapon or component if the information was contained in any document that has been declassified or removed from the RD category; and
- ! meets an adverse-effect test, in that unauthorized dissemination could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

Protection and control of UCNI involves special access, physical protection, reproduction, transmission, and destruction requirements that must be followed if a procurement involves UCNI.

4.1.18 Utility Services

Utility services for the furnishing of electricity, gas (natural or manufactured), steam, water, and/or sewerage to facilities owned or leased by DOE are generally acquired directly by DOE and not by AL. Acquisitions of utility services must be authorized by DOE.

4.1.19 Workplace Substance Abuse

As part of The AL Drug Control Program requesters are responsible for identifying work believed to be subject to the requirements of 10 CFR 707 and for including the requirements for a substance abuse plan to be submitted to AL for approval in specifications for work involving the following concerns:

- ! access to, or handling of, classified information or special nuclear materials;
- ! high risk of danger to life, the environment, public health and safety, or national security;
- ! construction, maintenance, or operation of nuclear reactors; or
- ! transportation of hazardous materials to or from a DOE site.

The prime contract requires AL to notify DOE in advance of, but no later than, 30 days before the award of subcontracts for on-site work believed to be subject to the requirements of 10 CFR 707. If DOE determines the work to be subject to the requirements of 10 CFR 707, the subcontractor's implementation plan is approved and monitored by AL ESH&A organization in accordance with The AL Drug Control Program.

4.2 SPECIAL METHODS

4.2.1 Construction

Any work requiring construction or construction-like activities expected to exceed \$2K in value must be reviewed by the DOE Davis-Bacon Committee for applicability of the Davis Bacon Act. A determination that work is **construction**, as distinguished from **services** under the SCA, will be determined by the ruling of the Davis-Bacon Committee. The Davis-Bacon Act requirements shall be included in subcontracts ruled as construction. T&Cs to be included in subcontracts for construction are contained in the T&Cs document and include all labor standards provisions. Payment and performance bonds are required in construction subcontracts ([Sect. 4.1.2](#)).

Construction subcontracts must contain appropriate wage determinations issued by the DOL (<http://www.wdol.gov>). Wage determinations are of two types—**general** and **project**. When it is necessary to issue a solicitation before receiving a wage determination, the solicitation shall include a notice that the schedule of minimum wage rates to be paid under the subcontract will be issued as an amendment to the solicitation.

Generally, firm-fixed-price subcontracts shall be used for construction. They may be priced on the basis of a lump sum, a unit price, or a combination of the two methods. Lump-sum pricing should be used in preference to unit pricing except in the following circumstances:

- ! when large quantities of work (e.g., grading, paving, building outside utilities, or site preparation) are involved;
- ! when quantities of work (e.g., excavation) cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;
- ! when estimated quantities of required work may change significantly during construction; and/or
- ! when offerors would have to expend unusual effort to develop adequate estimates.

Care should be taken when awarding both cost-reimbursement subcontracts and fixed-price subcontracts to the same firm where those subcontracts will be performed at the same site to ensure that the scopes of work are distinguishable.

Subcontracts for construction may not be awarded to the architect-engineer firm or an affiliate that prepared the design. This consideration does not preclude the award of a **turnkey** subcontract as long as the subcontractor assumes all liability for defects in design and construction and consequential damages. Construction subcontractors or their affiliates may not inspect their own work. The working relationships of the construction subcontractor, the subcontractor inspecting the work, and the authority of the inspector, must all be clearly defined.

Facilities Services shall provide an independent estimate of construction cost. Arrangements should be made for prospective offerors to inspect the work site and to have the opportunity to examine data available to AL, which may provide information concerning the performance of the work (e.g., boring samples, original boring logs, and records and plans of previous construction).

Upon award, a Notice To Proceed (NTP) shall be issued to the subcontractor. The NTP should satisfy the following requirements:

- ! specify the beginning and completion dates of the work;
- ! transmit payment and performance bond forms, if such are required;
- ! remind the subcontractor that field work cannot be started until acceptable bonds and insurance certificates have been submitted;

- ! specify dates by which the subcontractor's progress and procurement schedules are to be submitted.
- ! identify contacts for arranging plant access and attendance at the preconstruction meeting.
- ! transmit a copy of the applicable wage determination
- ! identify the persons to whom payrolls are to be submitted.
- ! remind the subcontractor that EEO posters and WH Publication 1321, Notice to All Employees Working on Federal or Federally Financed Construction Projects are required to be posted and are available at the DOL web site. The addresses are cited in the Terms and Conditions Sets.
- ! require acknowledgment by the subcontractor.

The subcontractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the subcontractor and each lower-tier subcontractor, copies of certified weekly payrolls applicable to the subcontract and weekly payroll statements of compliance.

If a subcontractor fails or refuses to comply with the labor standards clauses, AL upon its own action or upon the written request of DOE or DOL, shall suspend any further payment of funds until the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled, and to cover any liquidated damages which may be due.

If a subcontract is terminated for violation of the labor standards clauses, a report shall be submitted to DOE-CH, DOL, and the Comptroller General.

Facilities Services sends Procurement a Completion and Acceptance Report for each construction subcontract. When the report indicates that the work has been accepted without exception a Final Release is sent to the subcontractor. An executed copy shall be retained in the subcontract file and one shall be forwarded to the Accounts Payable Department to authorize final payment.

4.2.2 Consultants and Personal Services

The term consultant means a person, acting in his or her own behalf, who provides independent expert advice on managerial, technical, scientific, or educational matters. The term personal services subcontractor means a person acting in his or her own behalf who performs other than the advisory work that constitutes consulting services. Personal services subcontractors may include, but are not limited to, scientists, engineers, and other professionals; drafters; computer programmers; laboratory technicians; technical editors; procedure writers; and industrial hygienists .

4.2.3 Inter-Contractor Purchases

An Inter-Contractor Purchase (ICP) is a purchase transaction between two or more DOE management and operating contractors or site integrating contractors and includes Memorandum Purchase Orders and DOE Interoffice Work Orders. In unique or special circumstances, performance of work by another such contractor may be required. Justification for such work must document the special or unique requirements or experience of the contractor that are not readily available from the private sector.

Work between contractors is performed, generally on a cost-reimbursement basis, under the provisions of the performing contractor's prime contract. Work by another DOE contractor is authorized through a Memorandum Purchase Order issued by AL for requirements not exceeding \$1,000,000. For requirements exceeding \$1,000,000, the request for work is forwarded to the DOE-CH for further processing and issuance of a DOE Interoffice Work Order.

The following documents are not required for inter-contractor purchases:

- ! Solicitation and Source List Review forms;
- ! representations and certifications;
- ! submission, certification, and preaward audits of cost or pricing data; and
- ! use of T&Cs and other clauses.

The price or cost of work by another contractor must be considered reasonable.

4.2.4 Long Term Subcontracts

Solicitations and subcontracts that include provisions for twelve-month period of performance extensions based on the subcontractor's performance (on-time delivery, customer satisfaction, etc.) and cost/price history form the basis of long term subcontracts. The subcontractor's performance and cost /price history will be reviewed and analyzed by AL on an annual basis under long term subcontracts and may include items such as market surveys to validate the continued reasonableness of cost/price. A clause similar to the following should be used in appropriate subcontracts:

The Laboratory has the option of extending the period of performance of this subcontract annually based on the Laboratory's analysis of the Seller's performance and cost/pricing history.

5. TYPES OF SUBCONTRACTS

5.1 SELECTION OF SUBCONTRACT TYPE

A wide selection of subcontract types is available to provide needed flexibility in acquiring the large variety and volume of supplies and services required by AL. Subcontract types vary according to degree and timing of the responsibility assumed by the subcontractor for the costs of performance and amount and nature of the profit incentive offered to the subcontractor for achieving or exceeding specified standards or goals. The subcontract types are grouped into broad categories fixed-price subcontracts, cost-reimbursement subcontracts, and time-and-materials (T&M) or labor-hour subcontracts. The specific subcontract types range from firm-fixed-price, in which the subcontractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the subcontractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive subcontracts, in which the subcontractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in subcontract performance.

Subcontracts may be of any type or combination of types that will promote the U.S. Government's interest, except the cost-plus-a-percentage-of-cost subcontract shall not be used. The Buyer is responsible for selecting the appropriate subcontract type for the requirement.

Selecting subcontract type is generally a matter for discussion and requires the exercise of sound judgment. The objective is to select a subcontract type that will result in reasonable risk for the subcontractor and provide the subcontractor with the greatest incentive for efficient and economical performance.

5.2 FIXED-PRICE SUBCONTRACTS

Fixed-price subcontracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price subcontracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the subcontract, the ceiling price or target price is subject to adjustment only by operation of subcontract clauses (e.g., the Changes clause) providing for equitable adjustment or other revision of the subcontract price under stated circumstances.

5.2.1 Firm-Fixed-Price Subcontracts

A firm-fixed-price subcontract provides for a price that is not subject to adjustment on the basis of the subcontractor's cost experience in performing the subcontract. This subcontract type places upon the subcontractor maximum risk and full responsibility for

all costs and resulting profit or loss. It provides maximum incentive for the subcontractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

A firm-fixed-price subcontract is most suitable for acquiring commercial products or commercial-type products or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when fair and reasonable prices can be established at the outset, such as in the following circumstances:

- ! when adequate price competition exists;
- ! when reasonable price comparisons with previous purchases of the same or similar supplies or services made on a competitive basis, or supported by valid cost or pricing data, are available;
- ! when available cost or pricing information permits realistic estimates of the probable costs of performance; or
- ! when performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the offeror is willing to accept a firm-fixed-price that represents assumption of the risks involved.

5.2.2 Fixed-Price With Escalation

A fixed-price subcontract with escalation provides for upward and downward revision of the stated subcontract price upon the occurrence of specified contingencies. Escalation adjustments are of three general types:

- ! **Adjustments based on established prices.** These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the subcontract's deliverable end items.
- ! **Adjustments based on indexes.** These price adjustments are based on increases or decreases in indexes that are specifically identified in the subcontract.
- ! **Adjustments based on actual costs of labor or material.** These price adjustments are based on increases or decreases in specified costs of labor or material that the subcontractor actually experiences during subcontract performance.

A fixed-price subcontract with escalation may be used when the following conditions are present:

- ! serious doubt arises concerning market stability or labor conditions that will exist during an extended period of subcontract performance; and/or
- ! contingencies that would otherwise be included in the subcontract price can be identified and included separately in the subcontract.

5.2.3 Fixed-Price Incentive

A fixed-price incentive subcontract is a fixed-price subcontract that provides for adjusting profit and establishing the final subcontract price by formula-based incentives including cost, technical performance, and/or delivery. The final price is subject to a price ceiling, which is negotiated at the outset.

Fixed-price incentive subcontracts are appropriate when a firm-fixed-price subcontract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the subcontract to the subcontractor's performance. The two forms of fixed-price incentive subcontracts are firm target and successive target.

5.2.4 Fixed-Price with Price Redetermination

A fixed-price subcontract with prospective price redetermination provides the following:

- ! a firm fixed price for an initial period of subcontract deliveries or performance and
- ! prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

A fixed-price subcontract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed price for an initial period, but not for subsequent periods of subcontract performance. A fixed-ceiling-price subcontract with retroactive price redetermination is appropriate.

A fixed-ceiling-price subcontract with retroactive price redetermination provides for these items:

- ! a fixed ceiling price and
- ! retroactive price redetermination within the ceiling after completion of the subcontract.

5.2.5 Fixed-Price Level-of-Effort

A firm-fixed-price, level-of-effort term type subcontract requires the following conditions:

- ! that the subcontractor provides a specified level of effort, over a stated period of time, on work that can be stated only in general terms and
- ! that AL will pay the subcontractor a fixed dollar amount.

A fixed-price level-of-effort term type subcontract is suitable for investigation or study in a specific R&D area. The product of the subcontract is usually a report showing the results

achieved through application of the required level of effort. Payment is based on the effort expended rather than on the results achieved.

5.3 COST-REIMBURSEMENT SUBCONTRACTS

Cost-reimbursement subcontracts provide for payment of allowable incurred costs, to the extent prescribed in the subcontract. These subcontracts establish an estimate of total cost for the purpose of committing funds and establishing a ceiling that the subcontractor may not exceed (except at its own risk) without the approval of AL.

Cost-reimbursement subcontracts are suitable for use when uncertainties involved in subcontract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price subcontract.

5.3.1 Cost Subcontracts

A cost subcontract is a cost-reimbursement subcontract in which the subcontractor receives no fee.

5.3.2 Cost-Sharing Subcontracts

A cost-sharing subcontract is a cost-reimbursement subcontract in which the subcontractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs. A cost-sharing subcontract may be used when the subcontractor agrees to contribute a portion of the costs.

5.3.3 Cost-Plus-Incentive-Fee

A cost-plus-incentive-fee subcontract is a cost-reimbursement subcontract that provides for an initially negotiated fee to be adjusted later by formula-based incentives including cost, technical performance, and/or delivery. This subcontract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After subcontract performance, the fee payable to the subcontractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the subcontractor to manage the subcontract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the subcontractor is paid total allowable costs, plus the minimum or maximum fee.

A cost-plus-incentive-fee subcontract is appropriate for design, development and test programs when both a cost-reimbursement subcontract is necessary, and a target cost and a fee adjustment formula can be negotiated that are likely to motivate the subcontractor to manage effectively.

5.3.4 Cost-Plus Fixed-Fee

A cost-plus-fixed-fee subcontract is a cost-reimbursement subcontract that provides for payment to the subcontractor of a negotiated fee that is fixed at the inception of the subcontract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the subcontract. This subcontract type permits subcontracting for efforts that might otherwise present too great a risk to subcontractors, but it provides the subcontractor only a minimum incentive to control costs.

A cost-plus-fixed-fee subcontract is suitable for use when uncertainties involved in subcontract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price subcontract.

5.4 INDEFINITE-DELIVERY SUBCONTRACTS

The three types of indefinite-delivery subcontracts are the following:

- ! definite-quantity subcontracts,
- ! requirements subcontracts, and
- ! indefinite-quantity subcontracts.

The appropriate type of indefinite-delivery subcontract may be used when the exact times and/or quantities of future deliveries are not known at the time of subcontract award. Indefinite-delivery subcontracts permit AL stocks to be maintained at minimum levels, permit flexibility in both quantities and delivery scheduling and ordering of supplies or services after requirements materialize, limit AL obligation to the minimum quantity specified in the subcontract, and permit faster deliveries when production lead time is involved.

5.4.1 Definite-Quantity Subcontracts

A definite-quantity subcontract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order. A definite-quantity subcontract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the subcontract period and the supplies or services are regularly available or will be available after a short lead time.

5.4.2 Requirements Subcontracts

A requirements subcontract provides for filling all actual AL purchase requirements for specific supplies or services during a specified subcontract period, with deliveries to be scheduled by placing orders with the subcontractor. A requirements subcontract may

be used when AL anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that it will need during a definite period.

5.4.3 Indefinite-Quantity Subcontracts

An indefinite-quantity subcontract provides for an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the subcontractor. An indefinite-quantity subcontract may be used when AL cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the subcontract period and when it is inadvisable for AL to commit itself for more than the minimum quantity.

5.5 TIME-AND-MATERIALS AND LABOR-HOUR SUBCONTRACTS

A T&M subcontract provides for acquiring supplies or services on the basis of the following considerations:

- ! direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
- ! materials at cost, including, if appropriate, material handling costs as part of material costs.

A T&M subcontract may be used when it is not possible at the time of placing the subcontract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. A labor-hour subcontract is a variation of the T&M subcontract, differing only in that materials are not supplied by the subcontractor.

5.6 LETTER SUBCONTRACTS

A letter subcontract is a written, preliminary contractual instrument that authorizes the subcontractor to begin performance of work before agreement on all the subcontract provisions. A letter subcontract should be as complete and definite as possible and may be used in the following circumstances:

- ! when the interests of AL demand that work begin immediately and
- ! when negotiation of a definitive subcontract in sufficient time to meet the requirement is not possible.

An overall price ceiling shall be included in the letter subcontract. A letter subcontract shall provide for its definition within 180 days or before completion of 40% of the work to be performed, whichever is earlier. However, in extreme cases, an additional period may be authorized. The maximum expenditure or obligation authorized in the letter subcontract shall not exceed 10% of the estimated total price or cost and fee of the definitive subcontract, unless approved by the Purchasing Manager.

Letter subcontracts shall contain as many definitive subcontract provisions as is practicable. The letter subcontract should, therefore, be in the general format of a definitive subcontract. (In the definitive subcontract format, items to be negotiated, e.g., total estimated cost or fee, may be shown as to be determined.)

Letter subcontracts shall be definitized by a supplemental agreement that deletes the Letter Subcontract Provisions clause and adds the price or estimated cost and fee and other matters concluded by negotiations.

5.7 BASIC AGREEMENTS

A basic agreement is a written instrument of understanding negotiated between AL and a subcontractor that accomplishes the following functions:

- ! contains subcontract clauses applying to future subcontracts between the parties during its term and
- ! contemplates separate future subcontracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement.

A basic agreement is not a subcontract. A basic agreement may be used when a substantial number of separate subcontracts may be awarded to a vendor during a particular period and significant recurring negotiating problems have been experienced with the vendor. Basic agreements may be used with negotiated-fixed price or cost-reimbursement subcontracts.

5.8 BASIC ORDERING AGREEMENTS

A basic ordering agreement (BOA) is a written instrument of understanding, negotiated between AL and a subcontractor, that contains the following characteristics:

- ! terms and clauses applying to future subcontracts between the parties during its term;
- ! a description, as specific as practicable, of supplies or services to be provided; and
- ! methods for pricing, issuing, and delivering future orders under the BOA.

A BOA is not a subcontract. A BOA may be used to expedite subcontracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services included in the agreement are anticipated to be purchased from the subcontractor.

5.8.1 Price Agreements

A price agreement is a form of fixed-price BOA used by AL typically for supply procurements, particularly stores items.

5.8.2 General Orders

A **general order** is a BOA (generally, but not necessarily, on a cost-reimbursement basis) used by AL for repetitively required services.

5.9 MEMORANDUM PURCHASE ORDERS

The term **memorandum purchase order** describes the procurement agreement between AL and another DOE integrated contractor for requirements not exceeding \$1,000,000. (Memorandum purchase orders may be issued only to DOE integrated contractors for performance under the designated DOE contract (Sect. 4.2.5).

5.10 CONSULTANT AND PERSONAL SERVICES SUBCONTRACTS

The term **consultant** means a person, acting in his or her own behalf, who provides independent expert advice on managerial, technical, scientific, or educational matters. The term **personal services subcontractor** means a person acting in his or her own behalf who performs other than the advisory work that constitutes consulting services. Personal services subcontractors may include, but are not limited to, scientists, engineers, and other professionals; drafters; computer programmers; laboratory technicians; technical editors; procedure writers; and industrial hygienists (Sect. 4.2.3).

5.11 CONSTRUCTION SUBCONTRACTS

Construction subcontracts are normally firm-fixed-price or fixed-unit-price subcontracts that provide for alteration or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. The terms **buildings, structures, or other real property** include, but are not limited to, improvements of all types (e.g., bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, railways, terminals, docks, piers, wharves, ways, buoys, jetties, breakwaters, levees, canals, and channels). Fixed-price subcontracts with escalation may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

6. EVALUATION AND AWARD

6.1 PROPOSAL REVIEW

6.1.1 Guiding Principles

The overall guiding principles for proposal evaluation are efficiency and selection of the proposal that represents the best value. Sound judgment should be applied in determining appropriate variations and adaptations necessary for individual situations. The result of both cost and technical evaluations will be one or more offerors with the greatest likelihood of receiving an award. Offerors whose proposals are no longer being considered should be advised at the earliest practicable time. Exchanges of information may be beneficial both before or after defining the offeror or offerors with the greatest likelihood of receiving an award. Improper exchanges of information include the following examples:

- ! favoring one offeror over another by coaching, prompting, suggesting, or recommending ways in which an offeror must change its proposal to bring it up to the level of other proposals;
- ! revealing an offeror's technical solution to another offeror;
- ! advising an offeror of another offeror's price without that other offeror's permission;
- ! revealing the names of individuals providing reference information about an offeror's past performance; or
- ! knowingly furnishing source selection information or information about other offerors' proposals without permission of the source.

6.1.2 Determination of Responsible Offerors

Responsibility is the apparent ability to provide solicited goods or services in compliance with the terms of the subcontract. Entering into a subcontract constitutes a determination that the prospective awardee is responsible with respect to that subcontract. When an offeror is determined to be nonresponsible, the file shall be documented explaining the determination. Awarding a subcontract to a vendor based on lowest evaluated price alone can be false economy if subsequent default, late delivery, or other unsatisfactory performance results in additional contractual or administrative costs. While it is important that purchases be made at the lowest price, this does not require an award to a vendor solely because that vendor submits the lowest-priced offer. A prospective awardee must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

As applicable, a prospective awardee should meet the following standards:

- ! have adequate financial resources to perform the subcontract or the ability to obtain them;
- ! have an established system of accounting and financial controls;
- ! be able to comply with the required or proposed quality requirements and delivery or performance schedule;
- ! have a satisfactory performance record;
- ! have a satisfactory record of integrity and business ethics;
- ! have the necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- ! have the necessary production, construction, and technical equipment and facilities or the ability to obtain them; and
- ! be otherwise qualified and eligible to receive an award under applicable laws and regulations.

6.1.3 Confidentiality

Submissions in response to solicitations generally contain information which the offeror considers sensitive. This information may be technical, financial, or business related. To ensure confidentiality of this information, the information shall be used solely for purposes of evaluation of the offer for that specific solicitation and should be made available only to those with a need to know.

6.1.4 Technical Review

When a technical review is necessary, the Buyer forwards proposals to the requestor for review. The requestor reviews the submitted proposal in light of the following considerations to determine whether the proposal is technically acceptable:

- ! how the requirements identified in the solicitation are addressed,
- ! extent and effect of any exceptions to the specification or statement of work (SOW), and
- ! reasonableness of the proposed price/cost.

6.1.5.1 Price Reasonableness. Supplies and services shall be purchased from responsible sources at fair and reasonable prices. The Buyer is responsible for determining the reasonableness of the price in all procurements. Two basic methods for determining price are **price analysis** and **cost analysis**. More information than is necessary should not be obtained to determine price reasonableness.

Price analysis evaluates a prospective price without considering separate cost elements and proposed profit that make up the price. This evaluation may include the following elements:

- ! comparison of offers submitted,
- ! comparison of previous offers and prices with current offers for the same or similar items,
- ! comparison with public pricing information, and
- ! comparison of proposed prices with estimates developed by AL personnel.

The extent of the price analysis will depend chiefly on the procurement amount and the probable return from the pricing effort. In competitive procurements, the low offer is generally presumed to be reasonable.

Cost analysis is based on the following elements:

- ! review and evaluation of an offeror's cost or pricing data and
- ! judgmental factors applied in projecting to the estimated costs.

This application allows an opinion to be formed on the degree to which the proposed costs represent what performance of the subcontract should cost, assuming reasonable economy and efficiency.

6.1.5.2 Cost or Pricing Data. Offerors shall be required to submit certified cost or pricing data before award or modification of any subcontract >\$650K unless the following criteria are met:

- ! The price negotiated is **based on adequate price competition**.
- ! Prices are set by law or regulation.
- ! **Commercial Items** are being acquired.
- ! DOE waives the requirement.
- ! When modifying a contract for commercial items.

A price is **based on adequate price competition** if the following considerations are true:

- ! Two or more responsible offerors, competing independently, submit priced offers responsive to the solicitation.
- ! Even though only one offer is received, there was a reasonable expectation that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation.
- ! The proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities under contracts with adequate price competition.

6.1.5.3 Facilities Capital Cost of Money. The following clause, Waiver of Facilities Capital Cost of Money shall be included in subcontracts subject to the cost principles for commercial organizations when the offeror has not specifically identified or proposed facilities capital cost of money in its contract pricing proposal and has elected not to claim it as an allowable cost under the subcontract:

Waiver of Facilities Capital Cost of Money

The Seller is aware that facilities capital cost of money is an allowable cost but waives the right to claim it under this subcontract.

If an offeror identifies or proposes facilities capital cost of money, Form CASB-CMF is used to show the calculations of cost of money factors.

6.1.5.4 Profit/Fee. In competitive fixed-price procurements, the amount of profit the subcontractor expects at the offered price is the subcontractor's decision and concern.

However, in noncompetitive fixed-price procurements and in cost-reimbursement, time and materials (T&M), and labor-hour procurements, attention should be paid to estimated profit or fee. It is proper in these cases for the Buyer to determine a fair and reasonable profit or fee—a **profit objective**. Profit and fee objectives are based on information available before negotiations (e.g., proposals, audit reports, or technical reviews of cost or pricing data). Profit and fee objectives shall be determined individually for each subcontract. Across-the-board agreements on rates of profit or fee shall not be made. Fees shall not be paid to educational institutions or state, local, and Indian tribal governments.

In architect-engineer services, the price in fixed-price subcontracts or the total estimated cost and fee in cost-reimbursement subcontracts shall not exceed 6% of the estimated cost of construction of the project, excluding fees. In other types of subcontracts, fixed fees for cost-plus-fixed-fee and maximum fees for cost-plus-incentive-fee subcontracts shall not exceed the following limits:

- ! For experimental, developmental, or research work, the fee shall not exceed 15% of the total estimated cost of the subcontract.
- ! For all other work, the fee shall not exceed 10% of the total estimated cost of the subcontract.

6.1.6 Improper Business Practices

6.1.6.1 Anti-Trust Laws. AL is required to report possible violations of the anti-trust laws to DOE. Possible violations include rotated low offers, identical offers, collusive offers or any other bid device intended to deprive the U.S. Government of full and free competition. Reports of identical offers should not be submitted automatically, but only where there is some reason to believe that these offers may not have been arrived at independently.

6.1.7 Buy American Act

The Buy American Act requires that only **domestic end products** be purchased; these end products are defined as follows:

- ! an unmanufactured end product mined or produced in the United States, or
- ! an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components.

Supplies may be procured without regard to the restrictions of the Buy American Act whenever:

- ! procurement action is \$2,500 or less,
- ! supplies are for use outside the United States,
- ! cost of domestic supplies is unreasonable, or
- ! these supplies are not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Federal agencies have already determined that certain items are not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality. A listing of these items is set forth in FAR 25.104. When they are purchased, they shall be regarded as being of domestic origin. When a need for a determination arises for items not listed in FAR 25.104, a Purchase Determination, shall be prepared. The determination may be made for individual procurement actions by the Purchasing Manager when the aggregate value of the domestically unavailable items in the procurement does not exceed \$500,000. If the aggregate value of the domestically unavailable items exceeds \$500,000, DOE approval is required.

The Representations and Certifications form contains a Buy American certificate. This certification requires the offeror to list all foreign end products for procurements exceeding \$2,500. Leaving the certification blank obligates the offeror to furnish only domestic end products.

When quotations exceeding \$2,500 are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual

basis, shall be acceptable, unless the price for an offered domestic end product is unreasonable.

Each foreign offer subject to the Buy American Act shall be adjusted for purposes of evaluation by adding to the foreign offer (inclusive of duty) a factor of 6% of that offer. If the low acceptable domestic offer is from a small business, a factor of 12% shall be used to adjust the foreign offer. (If an award for more than \$250,000 would be made to a domestic concern if the 12% factor is applied [but not if the 6% factor is applied], DOE must determine whether award to the domestic concern will involve unreasonable cost or will be inconsistent with the public interest.) The evaluation adjustment shall not be applied to offers subject to a trade agreement under FAR Subpart 24.4.

6.2 NEGOTIATION

6.2.1 General Considerations

Each negotiation is unique. The detail and amount of negotiation vary depending on the complexity of the acquisition, the major issues, and the objectives. Prenegotiation objectives are a valuable tool in negotiating complex procurements. In setting price objectives, the Buyer shall analyze the offeror's proposal, taking into account any available audit report, technical review, and other pertinent data (e.g., independent AL estimates and price histories). The extent of the analysis supporting the objectives shall be directly related to the dollar value, importance, and complexity of the pricing action. Prenegotiation price objectives must be documented for actions exceeding \$2,000,000 in which the price objective differs substantially from the offeror's proposal. In addition to price objectives, other objectives (e.g., technical requirements, delivery, payment provisions, and T&Cs.) should be considered.

6.2.2 Price Negotiation

Price negotiation is intended to permit AL and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all participants' opinions or with the Buyer's prenegotiation objective. The Buyer is responsible for exercising the requisite judgment and is responsible for the final pricing decision. The recommendations and counsel of technical reviewers and auditors are advisory only. However, the Buyer should include comments in the file memorandum when significant audit or other recommendations are not adopted.

The primary concern is the price AL actually pays; the subcontractor's eventual cost and profit or fee should be a secondary concern. The objective is to negotiate a subcontract of a type and with a price providing the subcontractor the greatest incentive for efficient and economical performance. The negotiation of a subcontract type and a price are related and should be considered together with the issues of risk and uncertainty to the

cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both AL and the subcontractor.

6.2.3 Exceptions to Standard Provisions

Changes in the standard provisions proposed by offerors may affect the rights and obligations of the involved parties. Proposed changes in the areas of liability, litigation, or intellectual property rights must be reviewed by DOE-CH. Proposed changes in other areas (e.g., inspection, quality, delivery, assignment, and remedies for breach) must be reviewed by the Purchasing Manager.

6.3 AWARD

6.3.1 Award Formats

Awards shall be made using the appropriate Subcontract or Purchase Order format that is applicable to the procurement request.

6.3.2 Justification/Documentation

The basis for award must be documented for all procurements exceeding \$10,000. A supplemental narrative file memorandum should be prepared as necessary to provide an adequate explanation of the procurement and for all procurements requiring DOE approval. If the subject is covered by another document, such as an evaluation team report or prenegotiation objectives form, references to the document will suffice. The file memorandum should generally include the following items:

- ! description of procurement,
- ! subcontractor information,
- ! sourcing and solicitation,
- ! selection process,
- ! negotiations,
- ! price/cost justification, and
- ! special considerations.

Conclusions reached after price or cost analysis should be discussed, including the results of any technical review and audit of cost or pricing data. If applicable, the memorandum should indicate the date of final agreement on price and the date the certificate of current cost or pricing data was executed. Differences between the date of final agreement on price and the date on which data were certified to be accurate, complete and current should be explained. For purchases in excess of \$150,000, the Procurement Summary-Commercial (over \$150,000) form (g/forms/Ames Lab Procurement Summary Commercial.doc) is to be completed and attached to the Purchase Order file.

6.3.3 Approvals

Approvals required for awards are set forth in Sect. 1.3.4, Internal Approval Authority.

6.3.4 Transportation

In accordance with the U.S. Government's self-insurance policy, AL is prohibited from incurring any obligations for issuance or for the payment of premium for insurance against loss, destruction, or damage in the shipment of material, except as specifically authorized by DOE. The Subcontractor should be instructed to ship at the maximum declared value allowed by the carrier without additional charge or at No Value Declared (NVD) if the limit is unknown. If rates or commodities are determined by actual value, the actual value is to be declared.

Premium transportation may be used on shipments for emergency requirements when the Buyer has determined that the goods cannot be delivered by the normal form of transportation by the needed date.

6.3.5 Payment Provisions

Generally, payment is made to subcontractors upon delivery and acceptance of supplies or services rendered and subcontractors are expected to make their own financing arrangements. However, advance, progress, or milestone payments may be provided for if doing so is the customary business practice, for procurements involving long lead times, or when doing so is otherwise appropriate or necessary. Advance payment for post office box rent and subscriptions to publications is customary. Advance payment for other services, materials, or supplies should be allowed only when essential. Progress payments based on costs are generally made on the basis of 90% of total costs incurred. For small businesses, payments may be made on the basis of 95% of total costs incurred. Milestone payments may be used when payment based on completion of specific, definable milestones with deliverables will be provided. When this payment method is used, a final payment amount should be withheld pending completion of all work.

6.3.6 Debriefing

The purpose of a debriefing is to enable an unsuccessful offeror to understand the basis for non-selection and to improve future proposals. Normally, debriefings are only conducted for competitively awarded subcontracts, with the award based on other factors besides lowest-priced technically acceptable offer. A record of the debriefing shall be maintained in the subcontract file. A debriefing may be conducted at the following times:

- ! upon request from an offeror,
- ! as soon as practicable, generally following announcement of award, or
- ! orally, in writing, or by electronic means.

The following table identifies acceptable and unacceptable topics of discussion for debriefings:

Debriefing Information

Acceptable to Discuss	Unacceptable to disclose
Strengths/weaknesses in offeror's proposal	Information (e.g. trade secrets, confidential manufacturing processes and techniques.
Overall evaluated price/technical rating of successful vs. debriefed offeror	Confidential financial information (e.g. profit and indirect cost rates)
Offeror's ranking among acceptable offers	Names of individuals who provided past performance information about the offeror
Make/model of item to be delivered by the successful offeror	Point-by-point comparisons of debriefed offeror's proposal with those of other offerors.
Reasonable responses to relevant questions on selection process, applicable regulations and authorities	

7. ADMINISTRATION

7.1 SUBCONTRACT MANAGEMENT

7.1.1 General Considerations

Subcontract administration is an essential function of the procurement process that helps to ensure the delivery of requirements in accordance with all subcontract terms and conditions (T&Cs).

Procurement plays a key role in the performance of subcontract administration. As required in carrying out the subcontract administration function, Procurement should perform the following actions:

- ! monitor the subcontractor's efforts and compliance with the terms of the subcontract;
- ! work closely with personnel for whom the work is being performed and keep appropriate personnel informed of the progress of the work and issues as they arise; and
- ! obtain the assistance of and coordinate the activities of specialists in quality assurance, legal, audit, accounts payable, engineering, and regulatory requirements.

7.1.2 Assignment of Claims

AL shall use the Assignment clause as follows: Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Laboratory; provided, that the Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract may be assigned to a bank, trust company or other financing institution, including any Federal lending institution.

7.1.3 Claims

DOE must be given immediate notice of any action, including any proceeding before an administrative agency, filed against AL. When an employee is made aware, verbally or in writing, of any such proceeding, the Purchasing Manager should be notified immediately.

7.1.4 Consent to Lower-Tier Subcontracts

Consent to certain lower-tier subcontracts is required by the Subcontracts clause in the cost-reimbursement T&C sets. Consent to lower-tier subcontracts shall be in accordance with Sect. 1.3.4, Internal Approval Authority.

Consent to a lower-tier subcontract does not constitute a determination of the acceptability of the sub-subcontract terms or price, or of the allowability of costs, unless the consent specifies otherwise.

Procurement may not consent to the following types of agreements:

- ! cost-reimbursement lower-tier subcontracts if the fee exceeds 15% in research and development lower-tier subcontracts or 10% in other lower-tier subcontracts;
- ! lower-tier subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;
- ! lower-tier subcontracts obligating AL to deal directly with the lower-tier subcontractor; or
- ! lower-tier subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the Subcontractor and lower-tier subcontractor binding on AL.

7.1.5 Expediting

Procurement's policy is to ensure that supplies are delivered and services performed by the dates required and to inform requesters when subcontract delivery or performance schedules may not be met. Subcontracts should be expedited as needed to provide timely delivery of supplies and services.

7.1.6 Invoice Review

Approval by the technical contact is required by A/P before invoice payment for subcontracts in which the subcontractor is required to submit an invoice. The requester has primary responsibility for determining whether any amount invoiced is appropriate and for approving payment. The requester should notify the Buyer before invoice approval if any amount invoiced appears unreasonable or unexpected considering the work required and progress made or performance is otherwise unsatisfactory.

The review of invoices submitted by a subcontractor should include at a minimum, a determination of the following conditions:

- ! The invoice correctly identifies the subcontract and, if applicable, the task order or work release.
- ! The invoice is in accordance with the provisions of the subcontract, especially if progress payments are involved.
- ! For cost-reimbursement subcontracts, the following conditions apply:
 - invoiced costs are within the allotted funds (in incrementally funded subcontracts) or the total estimated cost of the subcontract;
 - invoiced costs were incurred within the period of performance; and
 - overhead and G&A rates used for computing indirect costs are in accordance with any provisional or ceiling rates established in the subcontract.

7.1.7 Mistakes

Mistakes by the proposer/offeror may be disclosed before or after award or acceptance of the subcontract or even after subcontractor performance. Mistakes may be clerical or even more substantive. When a mistake is alleged, AL may permit correction if doing so will result in obtaining the best value. The correction need not be for the full amount of the alleged mistake. For example, a correction may not be appropriate to the extent that it places the proposer/offeror in a position where it is no longer the lowest-priced technically acceptable offer or the **best-value** proposer.

7.1.8 Modifications

Purchase order modifications are initiated by a requisition which identifies the changes in quantity or price as required.

Subcontract modifications, including changes that could be issued unilaterally, should be priced before their execution if this can be done without adversely affecting subcontract performance. If a significant cost increase could result from a subcontract modification and time does not permit negotiation of a price, at least a maximum price should be negotiated unless it is impractical to do so. When a change order is issued, an equitable adjustment in the subcontract price or delivery terms or both must be reflected in the form of a supplemental agreement. The Buyer shall ensure that certified cost or pricing data are submitted and that a cost analysis is made, if required.

7.1.9 Novations and Change-of-Name Agreements

A third party may be recognized as the successor in interest to a subcontract where the third party's interest arises out of the transfer of all the assets of the subcontractor or all of that part of the subcontractor's assets involved in the performance of the subcontract. Upon receipt of a request from a subcontractor to recognize a successor in interest or to

change its name under a subcontract(s) not finally settled, the Buyer shall perform the following:

- ! review the documentation submitted by the subcontractor and obtain any additional documents needed;
- ! prepare the novation or change-of-name agreement and effect appropriate revisions to each affected subcontract to confirm the agreement; and
- ! distribute the agreement and applicable subcontract documents to the transferor and/or the transferee, A/P, and other parties to which distribution of the original subcontract was made.

7.1.10 Receiving

The Receiving Department is responsible for receiving, inspecting, temporarily warehousing, and delivering to the end user all incoming supplies. They are also responsible for entering all pertinent receipt data in the receiving data base as required. When special inspection is required, support services of such organizations as the Engineering or Facilities Services Divisions may be used to determine whether the received supplies are in accordance with the subcontract.

Evaluated receipt settlement should not be used for certain procurements (e.g., subcontracts for lectures, subscriptions, training, consultant services, on-site service, and telephone service). Such procurements should be identified as Invoice Required; payment is made after receipt of the subcontractor's invoice and verification by the requester that the services have been rendered.

7.1.11 Shipping Orders

Procurement and other authorized persons are responsible for the preparation of shipping orders to return for repair or replacement material that does not meet specifications or is under warranty, and to ship U.S. Government-furnished property, trade-in items, and material being returned for credit in accordance with the terms of subcontracts. Procurement personnel are authorized to sign shipping orders for the shipment of materials.

7.1.12 Terminations

Subcontracts may be terminated for convenience or for default. In appropriate circumstances, a deductive change may be made through a bilateral modification. Proposed termination actions, including the use of cure notices and show cause notices in default actions, should be reviewed with the Purchasing Manager before taking steps

to initiate the termination. Previous DOE approval is required to terminate a subcontract for the convenience of the U.S. Government when award of the subcontract was subject to DOE approval.

Notices terminating subcontracts shall be written and state the following terms:

- ! that the subcontract is being terminated under the subcontract clause authorizing the termination,
- ! effective date of termination,
- ! extent of termination, and
- ! any other special instructions.

The Buyer, with assistance of auditing, technical, legal, and other personnel as necessary, and in general conformance with FAR Part 49, shall perform the following:

- ! direct the action required of the subcontractor;
- ! examine the settlement proposal of the subcontractor and, when appropriate, the settlement proposals of lower-tier subcontractors; and
- ! negotiate and enter into a settlement agreement with the subcontractor or settle by determination the elements that cannot be agreed upon.

7.2 CLOSEOUT

A subcontract is considered to be physically completed when the following occurs:

- ! the subcontractor has completed the required deliveries and the supplies have been inspected and accepted,
- ! the subcontractor has performed all services and the services have been accepted,
- ! or all option provisions, if any, have expired.

Leases are considered to be physically completed when the term of the lease has expired.

In unclassified firm-fixed-price subcontracts based on evaluated receipt settlement that do not involve U.S. Government-furnished property or subcontractor-acquired U.S. Government property and do not incorporate Patent Rights, no administrative actions are required to close out the subcontract file. In other subcontracts, administrative actions are required to ensure that the following actions are completed:

- ! In cost-reimbursement, time-and-materials (T&M), and labor-hour subcontracts, acknowledgment that the work is complete has been received from the technical contact.
- ! Disposition of classified material is completed.
- ! In subcontracts where a Subject Invention is made or conceived, notice of patent clearance has been received from DOE-CH.
- ! In subcontracts exceeding \$10,000, any report by the Subcontractor of royalty payments has been cleared by the DOE-CH.
- ! In fixed-price subcontracts involving government-furnished property or subcontractor-acquired government property, and in cost-reimbursement and T&M subcontracts, property disposition has been completed.
- ! Price revisions under fixed-price-with-escalation subcontracts are completed and confirmed by supplemental agreement.
- ! In cost-reimbursement, T&M, and labor-hour subcontracts, the subcontractor's final or Completion invoice has been submitted.
- ! In cost-reimbursement, fixed-price-with-cost-incentive, and fixed-price redeterminable subcontracts, indirect cost rates and costs incurred for the years of subcontract performance are settled.
- ! In cost-reimbursement, T&M, and labor-hour subcontracts, closeout audit is completed. After receipt of the closeout audit report, final costs are negotiated, any required adjustments made, and release of retained funds authorized.

In cost-reimbursement, T&M, and labor-hour subcontracts, the following forms must be executed by the subcontractor:

- ! Seller's Release
- ! Inventory of Government Property

The settlement of indirect costs for a specific subcontract may be negotiated using quick closeout under the following conditions:

- ! The subcontract is physically complete;
- ! the amount of indirect cost to be allocated to a single subcontract will not exceed \$1,000,000 per subcontractor per fiscal year; and
- ! agreement can be reached on a reasonable estimate of allocable dollars.

The extent of audit assistance in applying quick close-out should be decided on a case-by-case basis. Audits of indirect costs should not be requested if it is reasonably apparent that the audit would have little effect on the rates or expense finally agreed

upon and any overpayments would be relatively insignificant when compared with the resources necessary to perform an audit.

All subcontract files are retained for a period of six years. If subcontract files become relevant to litigation, extend the retention period until such time as the litigation is resolved.